

CORP. TAX DET.  
1975  
Ter Bush & Powell,  
Inc.

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of Petition :  
                    of :  
TER BUSH & POWELL, INC. :  
for refund of franchise tax :  
under Article 9-A of the :  
tax law for the fiscal year :  
ended 6/30/72. :  
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The taxpayer having filed a petition for refund of franchise tax under Article 9-A of the tax law for the FYE 6/30/72, and a hearing having been held at the office of the State Tax Commission, State Campus, Albany, N. Y., at which hearing T. E. Devine, Secretary-Treasurer, and M. F. Daly, Esq. of counsel, appeared and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) Ter Bush & Powell, Inc. ("Ter Bush") is engaged in business as a general insurance agency. It filed a return for the FYE 6/30/72 computing a third alternative tax of \$20,160.00 based on entire net income plus officers' compensation of \$712,592.00 as follows:

Entire net income	49,090.00
Plus officers' compensation	712,592.00
Total	761,682.00
Less specific exemption	15,000.00
Balance	746,682.00
Base - 30% of balance	224,005.00
Alternative tax at 9%	20,160.00

The taxpayer subsequently filed an amended return deleting compensation paid to eight officers in the amount of \$394,755.94, and computing the alternative tax based on compensation of \$317,836.01 paid to ten other officers, resulting in a refund claim of \$11,095.00.

(2) Based on a field audit examination, the Corporation Tax Bureau disallowed the refund claim and asserted a deficiency of \$30.00 based on directors' fees of \$1,100.00 paid to officers. Such amount had not been included as officers' compensation on the original return.

(3) The field audit examination disclosed that all eighteen officers shown on the original return were elected or appointed by the Board of Directors, and held themselves out as officers in their business dealings. The eight officers who were omitted from the amended return held the title of Senior Vice-President or Vice-President. They were furnished with office space and secretarial services and were treated as employees, not independent contractors, for social security tax and Federal and State payroll and withholding tax purposes. Ter Bush contends that the compensation paid to the eight officers at issue should be excluded because their titles were conferred to enable them to better promote their sales efforts. Their compensation was dependent on sales volume and they were not assigned any administrative functions.

(4) Section 210.1 of the tax law reads in part:

"The tax . . . shall be . . . (3) computed at the rate of nine per centum on thirty per centum of the taxpayer's entire net income plus salaries and other compensation paid to the taxpayer's elected or appointed officers and to every stockholder owning in excess of five per centum of its issued capital stock minus fifteen thousand dollars . . . "

(5) Section 3.20c of Ruling of the State Tax Commission dated March 14, 1962 reads in part:

"An 'elected or appointed officer' includes . . . vice-president . . .  
" . . . there must be included all compensation received by an officer from the corporation in any capacity, including directors' fees."

The State Tax Commission hereby

DECIDES:

(A) Since all eighteen officers were elected or appointed officers, the entire compensation paid to them, including directors' fees, must be included in computing the base for the third alternative tax.

(B) Taxpayer's claim for refund is denied and the deficiency of \$30.00 indicated in (2) is affirmed, together with interest in accordance with Section 1084 of the tax law.

Dated: Albany, New York

this 3rd Day of July 1975.

STATE TAX COMMISSION

  
President

  
Commissioner

  
Commissioner